IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

Crl.MC.No. 747 of 2007()

AGAINST THE ORDER DATED 13/02/2007 IN CMP 311/2007 IN ST.715/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY

.....

PETITIONER/ACCUSED:

MOYINKUTTY, AGED 45 YEARS,
S/O.AHMEDKUTTY, THOTTINKARA HOUSE,
KODUVALLY P.O., MADRASSA BAZAR, CALICUT.

BY ADV. SRI.R.SUDHISH
SRI.VINOD SING CHERIYAN

RESPONDENTS/COMPLAINANT/STATE:

---

1. M.VIMAL CHAND, S/O.MAHAVEER CHAND,
PROPRIETOR, KANAKALIYA FINANCE LTD.,
VEERAPPAN STREET, CHALLANI PLAZA,
SAW CARPET CHENNAI- 600079,
AGENT'S OFFICE AT. AMRUTHA AUTO CONSULTANCY,
CHUNGAM, THAMARASSERY,KOZHIKODE.

2. THE STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.S.U.NAZAR
R1 BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM
SMT.MABLE.C.KURIAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 747 of 2007

- -

Dated this the 28th day of May, 2007

O R D E R

The petitioner faces indictment in a prosecution under section 138 of the N.I. Act. Ext.P4 is the cheque in question. The signature in Ext.P4 is not disputed. The short contention of the petitioner is that there admittedly was a transaction between the parties in 1999 and all the four documents - Exts.P1 to P4 - were signed and handed over in 1999. Exts.P1 and P2 bear the dates 1999 even now. But Exts.P3 and P4 now bear the dates in 2004. It is the case of the petitioner that the documents were handed over as blank signed cheques when the parties entered into a transaction.

2. At the defence stage the petitioner wanted the documents to be sent to an expert. Exts.P1 and P2 are admittedly written in 1999. The petitioner contended that a perusal of the entries in Exts. P1 to P4 will unmistakably convey to an expert that all the four documents were signed with the same ink, in the same handwriting and on the same date. It is hence that he wanted the documents, Exts.P1 to P4, to be sent to an expert.

3. The application was opposed and the learned Magistrate who upheld the objection and rejected the prayer. The learned Magistrate observed that the signature in the cheque was admitted and that it was not possible for the expert to determine the age of the hand writing.

4. The learned counsel for the petitioner submits that the learned Magistrate has grossly gone wrong. He submits that the mere admission of the signature does not at all take the complainant long. If it is proved that all the four documents, two of which were admittedly executed in 1999, were signed and affixed on the same day, that would go a long way to hold that the petitioner has proved his innocence.

5. The application is opposed by the counsel for the complainant. The counsel submits that allowing the request would contribute only to further protraction of the proceedings. I am satisfied, in the facts and circumstances of this case, that the court below was totally wrong in not directing that the expert must examine the documents and render his opinion. I am satisfied that the impugned order warrants interference by invoking the jurisdiction under Section 482 Cr.P.C. Appropriate safeguards can be provided.

6. This Crl.M.C. is accordingly allowed. The impugned order is set aside. C.M.P. 311 of 2007 is allowed and the learned Magistrate is directed to forward the documents to an expert in accordance with law for getting the necessary opinion. It is however made clear that in case the complainant ultimately succeeds, there mustl invariably be a direction to pay compensation along with interest for the amount found due from the date of the cheque till the date of payment.

(R. BASANT)
Judge

tm